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Applicant: Farroni et al.
Appl. No.: 10/619,376
Filed: July 11, 2003
Title: OPTICAL FIBER
Attorney Docket No.: NU-202-CIP
Pub. No.: US 2004/0086245 A1
Pub. Date: May 6, 2004

NOV 29 2004

OFFICE OF PETITIONS

This is a decision to the request for correction of patent application publication under 37 CFR 1.221(b), which was received on May 30, 2004.

The request is DISMISSED.

The instant request is that the application be republished because the patent application publication contains an error on the front page of the publication in the "Related U.S. Application Data," as the application No. 10/392,243 is listed as a continuation-in-part of application No. 10/392,064 and it should state that the instant application is a continuation-in-part of application No. 10/392,243.

37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records . . . Any request for a corrected publication or revised patent application publication other than provided as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.¹

The error on the front page of the publication is not a material error under 37 CFR 1.221(b). The error is not a material mistake because applicant did not make a proper benefit claim in compliance with 37 CFR 1.78, as the benefit claim is in multiple sentences. An amendment, a petition and fee under 37 CFR 1.78 are not required because the Office picked up the priority information and 37 CFR 1.78 as currently amended permits a benefit claim to be made in multiple

¹Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239 Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

sentences. The mistake does not affect the public's ability to appreciate the technical disclosure of the patent application publication, or determine the scope of the patent application publication or determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.

On October 15, 2003 and January 29, 2004, Filing Receipts were mailed, which did not properly list the priority information. To avoid this type of problem in the future, applicant's representative should make request a corrected filing receipt using the facsimile number (703-746-9195) on the Filing Receipt.

The applicant is advised that a “request for republication of an application previously published” may be filed under 37 CFR 1.221(a). Such a request for republication “must include a copy of the application in compliance with the Office’s electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i).” If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18(d) will be refunded. The processing fee will be retained.

Any request for republication under 37 CFR 1.221(a), must be submitted via the EFS system and questions should be addressed as follows:

By mail to: Mail Stop PGPUB
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: 703-872-9306

The application will be examined in due course.

Inquiries concerning this communication should be directed to Mark Polutta at (571) 272-7709.


Mark O. Polutta
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

Enclosure: Corrected Filing Receipt